IN THE HIGH COURT OF JUDICATURE,

ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 14319 of 2005

Between:

1. The Engineer-in-Chief, Public Health, Hyderabad.

2. The Government of A.P, Rep by its Secretary to Government, Municipal Administration & Urban Development Department, Secretariat , Hyderabad.

..... PETITIONERS

AND

N.Kumaraiah, Deputy Executive Engineer, Municipal Council, Karimnagar.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or direction more particularly one in the nature of writ of certiorari calling for the records connected with the order dt.18-08-2004 in O.A.No.864/2003 with M.A.3186/2003 on the file of the Hon'ble A.P. Administrative Tribunal, Hyderabad and quash the same as illegal and erroneous and pass such other order or orders.

Counsel for the Petitioners :GP FOR SERVICES I.

Counsel for the Respondent: None appeared.

The Court at the stage of admission made the following :

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THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

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WRIT PETITION NO.14319 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

Aggrieved by an order of the Andhra Pradesh Administrative Tribunal in O.A.No.864 of 2003 dated 18th August 2004, the respondents therein preferred the present writ petition.

The respondent herein, was working as Deputy Executive Engineer, Municipal Council, Jagitial, Karimnagar District. Basing on a complaint, a charge memo was issued to him on 24-02-1996 comprising of following five charges:

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"Charge No.1:

That the Municipal Commissioner, Jagitial has granted permission for the construction of the shops etc., in B.A. No:130/C1/92, and 134/C1/92, against the recommendations of the Town Planning staff are in violation of Master Plan and Zoning regulations.

Charge No.2:

That the Municipal Commissioner, Jagitial has granted permission for establishment of Computer Centres without verifying whether so many computer centers could sustain and the nomenclatures was given only for the purpose of obtaining permission and to utilize the same for shops subsequently.

Charge No.3:

That the Municipal Commissioner, Jagitial has granted permission for

construction of five buildings but three applicants have not commenced the construction. The Municipal Commissioner, has not revoked the permission to prevent any non-conforming development with less front set back.

Charge No.4:

That the Municipal Commissioner, Jagitial has not re-erect the fencing duly evicting the encroachments, so as to put the same for some suitable public purpose.

Charge No.5:

That the Municipal Commissioner, Jagitial has failed to insist for prior approval of the layout in all the five cases before granting permission for construction of shops."

An enquiry was conducted. After receipt of the enquiry report, a copy of which was supplied to the respondent and his explanation was received. Finally, the 1st petitioner herein was instructed to impose punishment of stoppage of three increments with cumulative effect by the 2nd petitioner in his Proceedings dated 03-05-2002. Faithfully the 1st petitioner passed order to the above affect, which reads as follows:

" In view of the Government orders in the reference cited (copy enclosed) three annual grade increments have been withheld with cumulative effect under rule 9 of APCS (CCA) Rules, 1991 as a measure of punishment to Sri K. Komuraiah, Asst. Executive Engineer formerly incharge Commissioner of Jagitial Municipality for the irregularities committed by him while issuing building permissions in Jagitial Municipality as incharge Municipal Commissioner with immediate effect.

The Superintending Engineer, (PH), Warangal is directed to implement the above orders and report compliance.

The receipt of the orders may please be acknowledged."

Aggrieved by the said order, the respondent approached A.P.A.T. by O.A.No.864 of 2003. By the impugned order, the Tribunal was pleased to allow O.A. setting aside the order of the 1st respondent dated 20-07-2002 and hence, the present writ petition.

The learned counsel appearing for the petitioners submitted that the Tribunal

considered the correctness of the conclusions reached by the Enquiry Officer, only with regard to one of all the five charges framed against the respondent viz. Charge No.2 and came to the conclusion that the punishment imposed on the respondent is not justified, without considering the material insofar as remaining four charges are concerned.

Insofar as Charge No.2 is concerned, in our view, the Tribunal rightly came to the conclusion that the charge was unsustainable. The charge suggests that the respondent should have verified whether so many computer centers could sustain, before granting permission, and in our view, the Tribunal rightly held as follows:

> "I do not know of any Government order, instruction or rule, which makes it the responsibility of an authority granting building permission, to ascertain whether the applicant is a prudent businessman or not."

We have absolutely no reason to take a different view than the one taken by the Tribunal in this regard.

Insofar as other charges are concerned, though the Tribunal did not really discuss the material on record, whether to sustain or reject those charges, we are of the opinion that Charge Nos. 4 and 5, on a plain reading are very vague.

Insofar as Charge No.3 is concerned, nothing is brought to our notice in law, to demonstrate that the respondent owed a legal obligation to revoke the building permission granted, if the construction had not commenced within the specified period from the date of granting of the permission. On the other hand, the learned Government Pleader submitted that any such unutilized building permission would lapse after a period three years. If the lapse is automatic in the language of the statute of the relevant statutory rules, there is no obligation cast on the respondent to revoke the permission already granted. At any rate, nothing is brought to our notice in this regard.

Insofar as Charge No.1 is concerned, the charge is a little more specific as it accuses the respondent of granting permissions for construction of shops etc., in B.A. Nos: 130/C1/92 and 134/C1/92 against the recommendations of the Town and

Planning Staff and in violation of Master Plan and Zoning regulations.

A copy of the report of the Enquiry Officer is placed before us. Insofar as Charge No.1 is concerned, the Enquiry Officer did not record any finding as to B.A.No.133/C1/92, but insofar as B.A.No.134/C1/92, the Enquiry Officer did find fault that the respondent's decision to grant permission. However, we do not no what is the defense of the respondent, with reference to that allegation. Neither the order of the 1st petitioner dated 20-07-2002 nor the order of the 2nd petitioner dated 03-05-2002, discuss the defense of the respondent.

Apart from these infirmities, we notice from the order of the 1st petitioner dated 20th July 2002, that he simply acted to the dictation of the 2nd petitioner without any further application of mind.

For all the above mentioned reasons, we do not see any reason warranting interference with the conclusion reached by the Tribunal in allowing the O.A.No.864 of 2003, and we do not find any merit in the writ petition.

Writ petition is accordingly dismissed as the stage of admission. In the circumstances, there shall be no order as to costs.

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J.Chelameswar, J

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M.Venkateswara Reddy, J

5th July 2005.

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To

1. The Engineer-in-Chief, Public Health, Hyderabad.
2. The Secretary to Government, Municipal Administration & Urban Development Department, Government of A.P, Secretariat, Hyderabad.
3. Two CCs to the G.P. for Services-I, High Court of A.P., Hyderabad (OUT).
4. Two CD copies.

*Form-NIC-OGS/WP{**TRR**}*